

RECORDATION NO. 27745 **FILED**

DEC 05 '08 -8 15 AM

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, N.W.
SUITE 301

WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

SURFACE TRANSPORTATION BOARD

December 5, 2008

Anne K. Quinlan, Esquire
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of December 4, 2008, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Seller/Assignor: Infinity Rail, LLC
1355 Peachtree Street
Suite 750, South Tower
Atlanta, GA 30309

Buyer/Assignee: Midwest Railcar Corporation
4949 Autumn Oaks Drive
Maryville, IL 62062

Anne K. Quinlan, Esquire
December 5, 2008
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A description of the railroad equipment covered by the enclosed document is:

25 flat bed railcars: UMP 9901 - UMP 9904; UMP 19630 - UMP 19634 and within the series BVERY 9610 - BVERY 9627 as more particularly set forth in the attachment to the document.


A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/sem
Enclosures

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ASSIGNMENT AND ASSUMPTION AGREEMENT

SURFACE TRANSPORTATION BOARD

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 4, 2008 (this "Agreement"), is between Infinity Rail, LLC a Georgia limited liability company (the "Seller"), and Midwest Railcar Corporation, an Illinois corporation (the "Buyer").

RECITALS

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of December 4, 2008 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

AGREEMENT

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. **Assignment.** Effective as to each unit of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such unit and assigns to the Buyer all of the Seller's rights and obligations, to the extent arising on or after the Closing Date, under the Lease (including, without limitation, all of Seller's rights in and to the guaranty thereunder provided by ArcelorMittal USA Inc. f/k/a International Steel Group Inc.) and any other Operative Agreements as they relate to each unit. Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any right to indemnification for tax or other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller accruing on or after the Closing Date under, and agrees to be bound to the same extent as the Seller by all the terms of, the Operative Agreements. Effective on and after the Closing Date (except with respect to obligations not assumed pursuant to the preceding sentence), the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Operative Agreements and each reference in the Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller is released of all obligations accruing under the Operative Agreements on or after the Closing Date.

4. **Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

Bill of Sale: the bill of sale in the form of Exhibit I hereto.

Closing Date: the date of the Bill of Sale.

Equipment: (i) the railcars described in Schedule 1 to this Agreement together with (ii) every part, accessory, component and any equipment installed therein or attached thereto, except for any that have been installed or attached by the Lessee or other user of the Equipment and have not become property of the lessor pursuant to the Lease as of the Closing Date. Individually each railcar is referred to as a "unit" or "unit of Equipment."

Lease: the lease described in Schedule 2 to this Agreement.

Lessee: the lessee under the Lease, identified in Schedule 2 to this Agreement.

Operative Agreements: together, the Lease and the other agreements described in Schedule 2 to this Agreement (but in the case of any master lease agreement described in that Schedule 2, solely as it pertains to the Lease).

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Operative Agreements.

5. **Amendments.** No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. **Notices.** All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Illinois, without giving effect to its conflict of law rules.

10. **Entire Agreement.** This Agreement, the Purchase Agreement, and the Bill of Sale (together with their exhibits and schedules) represent the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

11. **Recordation.** The Buyer will record this Agreement with the Surface Transportation Board.

[Execution on next page]



[signature page for Assignment and Assumption Agreement]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

| | |
|--|---|
| INFINITY RAIL, LLC By Infinity Asset Management, LLC as Manager By: <u><i>Jeffrey E. Edelman</i></u> Jeffrey E. Edelman, President | MIDWEST RAILCAR CORPORATION By: _____ Richard M. Folio, Executive Vice President |
| State of Georgia; County of Fulton On <u>December 3</u> , 2008, before me personally appeared Jeffrey E. Edelman, to me personally known, who being by me duly sworn said that he is President of Infinity Asset Management, LLC, Manager of Infinity Rail, LLC, and that, as such officer, being duly authorized to do so, he executed the foregoing instrument on behalf of said limited liability company. <u><i>Stephanie Cassamano</i></u> Notary Public My commission expires: _____ Notary Public, DeKalb County, Georgia My Commission Expires Aug. 2, 2009 [NOTARIAL SEAL] | State of Maryland, City of Baltimore On _____, 2008, before me personally appeared Richard M. Folio, to me personally known, who being by me duly sworn said that he is the Executive Vice President of Midwest Railcar Corporation, and that, as such officer, being duly authorized to do so, he executed the foregoing instrument on behalf of such corporation. _____ Notary Public My commission expires: _____ [NOTARIAL SEAL] |

[signature page for Assignment and Assumption Agreement]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

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|--|--|
| INFINITY RAIL, LLC By Infinity Asset Management, LLC as Manager By: _____ Jeffrey E. Edelman, President | MIDWEST RAIL CAR CORPORATION  By: _____ Richard M. Folio, Executive Vice President |
| State of Georgia; County of Fulton On _____, 2008, before me personally appeared Jeffrey E. Edelman, to me personally known, who being by me duly sworn said that he is President of Infinity Asset Management, LLC, Manager of Infinity Rail, LLC, and that, as such officer, being duly authorized to do so, he executed the foregoing instrument on behalf of said limited liability company. _____ Notary Public My commission expires: [NOTARIAL SEAL] | State of Maryland, City of Baltimore On <u>November 26</u> 2008, before me personally appeared Richard M. Folio, to me personally known, who being by me duly sworn said that he is the Executive Vice President of Midwest Railcar Corporation, and that, as such officer, being duly authorized to do so, he executed the foregoing instrument on behalf of such corporation.  _____ Notary Public My commission expires: [NOTARIAL SEAL] |

HENRYKA W. GRYC CRAIG
NOTARY PUBLIC STATE OF MARYLAND
County of Baltimore
My Commission Expires September 29, 2005
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EXHIBIT I
to Assignment and Assumption Agreement

FORM OF BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Infinity Rail, LLC, a Georgia limited liability company ("Seller"), does hereby sell, transfer and assign to Midwest Railcar Corporation, an Illinois corporation ("Buyer"), all of Seller's rights, title and interest in and to the equipment described in Schedule 1 hereto, subject to the terms and conditions of the Purchase Agreement, dated as of December 4, 2008, between Seller and Buyer, and the Assignment and Assumption Agreement, dated December 4, 2008, between Seller and Buyer.

INFINITY RAIL, LLC
By Infinity Asset Management, LLC as Manager

By: _____
Jeffrey E. Edelman, President

Dated: December 4, 2008

Schedule 1
(to Purchase Agreement, Assignment and Assumption Agreement, and Bill of Sale)

Description of railcars:

Twenty five (25) used 89-foot, 100-ton nominal capacity flat bed railcars originally built in 1975 or 1976, bearing the following reporting marks and road numbers:

| Unit Count | Car Mark | Car Num |
|---------------|-------------|------------|
| 1 | BVRY | 9610 |
| 2 | BVRY | 9611 |
| 3 | BVRY | 9612 |
| 4 | BVRY | 9613 |
| 5 | BVRY | 9614 |
| 6 | BVRY | 9615 |
| 7 | BVRY | 9616 |
| 8 | BVRY | 9617 |
| 9 | BVRY | 9618 |
| 10 | BVRY | 9620 |
| 11 | BVRY | 9621 |
| 12 | BVRY | 9622 |
| 13 | BVRY | 9623 |
| 14 | BVRY | 9624 |
| 15 | BVRY | 9626 |
| 16 | BVRY | 9627 |
| 17 | UMP | 19630 |
| 18 | UMP | 19631 |
| 19 | UMP | 19632 |
| 20 | UMP | 19633 |
| 21 | UMP | 19634 |
| 22 | UMP | 9901 |
| 23 | UMP | 9902 |
| 24 | UMP | 9903 |
| 25 | UMP | 9904 |

Schedule 2
(to Assignment and Assumption Agreement)

Operative Agreements; Lessee

Lessee: Mittal Steel USA - Railways Inc. (f/k/a ISG Railways Inc.)

Lease:

- (i) Lease Agreement dated as of May 1, 1996 between Rail Trusts Equipment, Inc. as original lessor and Brandywine Valley Railroad Company as original lessee and Lukens Steel Company as original guarantor;
- (ii) Consent and Agreement dated as of August 20, 1996 between Morgan Rail L.L.C. (successor in interest to Rail Trusts Equipment, Inc.) as assignor, Brandywine Valley Railroad Company as lessee, Lukens Steel Company as guarantor, and The First National Bank of Maryland as assignee;
- (iii) Assignment and Consent to Assignment dated December 22, 2003 among Brandywine Valley Railroad Company, ISG Railways, Inc., Manufacturers and Traders Trust Company, and International Steel Group Inc.;
- (iv) Amendment to Lease dated as of December 1, 2005, between Infinity Rail, LLC, as lessor party, ISG Railways, Inc., a Delaware corporation, as lessee party, and Mittal Steel USA ISG Inc. (f/k/a International Steel Group Inc.), as guarantor party;
- (v) Amendment #2 to Lease dated as of March 31, 2006, between Infinity Rail, LLC, as lessor party, ISG Railways, Inc., as lessee party, and Mittal Steel USA Inc. (f/k/a International Steel Group Inc.), as guarantor party.

Other Operative Agreements: none.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 12/5/08



Robert W. Alvord